

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.MC.No. 3621 of 2007()

CRRP.4/2001 of ADDL.SESIONS COURT, THALASSERY
MC.22/2000 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY
.....

PETITIONER: REVISION PETITIONER/RESPONDENT:

V.PURUSHOTHAMAN, D/O.DAMU,
NALLAKANDY HOUSE, KOOTHUPARAMBA, NARAVOOR.

BY ADV. SRI.H.BADARUDDIN
SRI.C.A.JOSEPH

RESPONDENTS: PETITIONER/STATE:

1. K.PUSPA, D/O.KUNJAMBU, NHALIL HOUSE,
MOKERI, VALLIYAYI, THALASSERI.
2. ASHIN.K., (MINOR) REPRESENTED BY
MOTHER K.PUSPA, NHALIL HOUSE, MOKERI,
VALLIYAYI, THALASSERI.
3. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R3 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 3621 of 2007

Dated this the 4th day of December, 2007

ORDER

The petitioner has filed this petition under Section 482 Cr.P.C. to invoke the extra ordinary inherent jurisdiction vested in this Court to quash a concurrent direction issued to him under Section 125 Cr.P.C. to pay maintenance at the rate of Rs.350/- p.m. to his divorced wife and Rs.250/- p.m. to his child.

2. Marriage, divorce and paternity are all admitted and there is no dispute. The petitioner assails the concurrent direction only on two short grounds. He contends that his wife was guilty of desertion even when the marriage lawfully subsisted. A wife who did not discharge her duties during the currency of the marriage and deserted the petitioner is not entitled to claim maintenance after divorce. This in short is the first plea.

3. This plea cannot obviously stand. Though the definition of wife after the amendment to the Code in 1973

includes the divorced wife also, it has been held many times by this Court and the Supreme Court that Section 125(4) Cr.P.C. is not applicable to the claim of a divorced wife. She has no obligation after the divorce to reside with her former husband. Her claim for maintenance cannot be repelled by making an offer that she can come and stay with her divorced husband. The nature of the claim of the divorced wife is qualitatively different from that of a wife prior to divorce. The fact that she is not living with the divorced husband or that she had refused without valid reasons to reside with him prior to divorce cannot be reckoned as satisfactory grounds to repel the claim of maintenance of the divorced wife.

4. The only other contention raised is that an item of property had been settled in favour of the divorced wife by the petitioner. That aspect of the matter has been considered by both the courts. It was found that it was not a case of settlement of any property by the petitioner in favour of his wife towards her maintenance in future. That was a pure and simple sale deed executed by his sister in favour of his divorced wife. The fact that such a document was executed

cannot also, in these circumstances, be of any help to claim absolution from the liability.

5. No other contentions are raised. The quantum of maintenance awarded is absolutely reasonable. I am satisfied that the concurrent orders do not warrant interference by invoking the extra ordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C.

6. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

tm